

Message

From: Cora, Lori [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C8850941BF1540C796559DCE75C2F5EE-CORA, LORI]
Sent: 10/24/2018 5:51:08 PM
To: Steiner-Riley, Cara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Obef7d04f2e64e4b8b90235a30cc7109-Steiner-Riley, Cara]
Subject: FW: FYI - short talking points on OR 303d

FYI. See below for "summary" John Goodin was given. The meeting Tom Glazer said was occurring on Monday was cancelled so we haven't heard that there has been forward movement at HQ.

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From: Fullagar, Jill
Sent: Wednesday, October 24, 2018 10:12 AM
To: Cora, Lori <Cora.Lori@epa.gov>; Croxton, David <Croxton.David@epa.gov>
Subject: FW: FYI - short talking points on OR 303d

FYI, from Chris Hunter. He said this went from Tom Wall to John Goodin, but don't know if it went up from there. He does not know what the next steps are, and is not aware of a reschedule on the calendar; it seems like communication is maybe via email at this point. I'll let you know if I hear anything from him or from Dan. Thx.

jill

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From: Hunter, Christopher
Sent: Wednesday, October 24, 2018 7:16 AM
To: Fullagar, Jill <Fullagar.Jill@epa.gov>
Subject: FYI - short talking points on OR 303d

Hi Jill,

As I said in my voicemail, John's meeting was cancelled, so he didn't get a chance to use them, but here is what we sent up the chain on Monday.

Talking Points on OR 303(d) list

- Faced with a Notice of Intent to Sue (NOI) for failure to take a mandatory action, Region 10 would like to finalize its action on the Oregon 2012 303(d) list, which the State submitted in November 2014.

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- An open issue: **Attorney Client / Deliberative Process / Ex. 5**

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- OGC advises: **Attorney Client / Deliberative Process / Ex. 5**

- BACKGROUND: More than any other State, Oregon has faced challenges in implementing its 303(d) listing program and, for years, has been unable to complete the listing process without significant EPA support.
 - OR has recently done a total program overhaul, acquired a new database, and hired new staff to form a listing team (they previously had less than 1 FTE for listing). EPA has provided HQ and contractor assistance to help OR select a new database and geographic platform to track their “waterbody assessment units” and helped the State geo-reference its WQS. EPA is engaging with OR on listing methodology revisions and a stakeholder engagement process. OR is also undertaking its legislatively-required peer review process for methodology updates. EPA expects OR to submit a complete list catching up to the 2018 cycle to be submitted in 2019.
- In December 2016, the Region responded to the State’s 2012 list submission by partially approving/partially disapproving and identifying 1054 waters to add to the State’s list.
 - 714 were due to an adverse decision magistrate’s decision, which was later adopted by the district court, that led to the overturning of EPA’s approval of temperature TMDLs for more than 700 Oregon waterbodies.
- The Region also requested data and comments (while deferring action) on potential biological/aquatic life use impairments for one coastal segment.

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- We would be happy to send you a briefing paper with more information.

- WHERE WE ARE NOW: At the request of the RA, the Regional water program has worked with the State to finalize and reach agreement on the added waters, and has reduced the number of waters added to 999 (285 + the 714 court-related segments). The State does not object to these waters being added to the 2012 303(d) list. OWOW agrees with the Region’s recommendation to close out the process of adding these 999 waters.

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- In August, after the most recent briefing with the RA, the Center for Biological Diversity (CBD) sent a NOI to sue based on EPA’s failure to take final action on the 2012 303(d) list. CBD was one of the commenters urging EPA to list the coastal segment in response to EPA 2016 request for comments, and the NOI specifically references the coastal segment and some of the data indicating an impairment.
 - Note: CBD brought a lawsuit challenging EPA’s decision to not list waters for ocean acidification in Oregon’s and Washington’s 2010 303(d) lists. The court deferred to EPA in February 2015 and upheld the Agency’s decision not to list, due in part to the lack of site-specific field data.

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- As noted: **Attorney Client / Deliberative Process / Ex. 5**

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